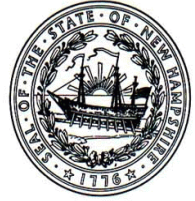


State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



Edgar and Beverly Crete
291 Mountain Rd
Concord, NH 03301

RE: Lovejoy Road, Loudon, NH

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
NO. AF 2000-025**

May 5, 2000

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Edgar and Beverly Crete, pursuant to RSA 482-A:13 and Env-C 601.05. The Division is proposing that fines totaling \$6,000 be imposed against the Cretes for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Edgar and Beverly Crete are individuals having a mailing address of 291 Mountain Road, Concord, NH 03301.

III. Summary of Facts and Law Supporting Claim(s)

1. RSA 482-A:13 authorizes the Commissioner of the Department of Environmental Services ("DES") to impose administrative fines of up to \$2,000 per offense for violations of RSA 482-A.
2. Pursuant to RSA 482-A:13, the Commissioner has adopted Env-C 614 to establish a schedule of fines for violations of RSA 482-A, rules adopted under RSA 482-A, and permits issued under RSA 482-A.
3. RSA 482-A:14 provides that failure, neglect or refusal to comply with RSA 482-A or rules

adopted under that chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.

4. On October 19, 1999, the Division received a complaint of improper logging practices and possible wetlands impacts occurring on property located on Lovejoy Road in Loudon, NH, more particularly described in Town of Loudon tax maps as Map 39, Lot 11 ("the Property").

5. On November 10, 1999, Division personnel inspected the Property. The inspection revealed the following:

a) Logging equipment had crossed a seasonal stream without proper crossing devices in place, without any siltation or erosion controls in place and without a permit from DES. The area affected measured approximately 40 square feet.

b) Logging equipment had rutted through extensive wetland areas, including significant areas with standing water, without proper crossing devices in place, without proper siltation and erosion controls in place and without a permit from DES. The affected areas measured approximately 1,000 linear feet by approximately 10' to 15' wide.

c) Large amounts of slash materials had been left in wetlands and a perennial stream on the Property without a permit from DES.

6. Following the November 10, 1999 inspection, Division personnel met with a member of the Loudon Conservation Commission, who had informed Mr. Crete that work in wetlands areas on the Property required a permit from DES.

7. RSA 482-A:3, I states, in part, that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in or adjacent to any waters of the state without a permit from (DES)."

8. Wt 304.05(b) requires that logging roads and skid trails be laid out using appropriate erosion control devices, as outlined in the *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire*, April, 1996 ("the Manual").

9. Wt 304.05(c) requires the use of culverts, bridges, pole fords or other crossings on skid trails and temporary truck roads when crossing streams in accordance with procedures outlined in the Manual.

10. Env-C 614.06(f) defines a major wetlands violation as engaging in permit condition violations or other violations which, taken cumulatively, constitute a complete disregard of department conditions or proper construction (or forestry) practices.

11. Env-C 614.06 authorizes a fine of \$2,000 for major wetlands violations.

IV. Violations Alleged

1. Edgar and Beverly Crete have violated RSA 482-A:3, I and Wt 304.05(b) by allowing the crossing of an intermittent stream on the Property without proper crossing devices, without proper siltation and erosion controls in place and without a permit from DES.
2. Edgar and Beverly Crete have violated RSA 482-A:3, I and Wt 304.05(c) by allowing the rutting of extensive wetland areas on the Property without proper crossing devices in place, without proper siltation and erosion controls in place, and without a permit from DES.
3. Edgar and Beverly Crete have violated RSA 482-A:3, I by allowing the deposition of significant amounts of slash materials in wetlands and a perennial stream on the Property without a permit from DES.

V. Proposed Administrative Fines

1. For the violation identified in IV. 1. above, as a Class IV violation pursuant to Env-C 614.06(f), Env-C 614.06 specifies a fine of \$2,000.
2. For the violation identified in IV. 2 above, as a Class IV violation pursuant to Env-C 614.06(f), Env-C 614.06 specifies a fine of \$2,000.
3. For the violation identified in IV. 3 above, as a Class IV violation pursuant to Env-C 614.06(f), Env-C 614.06 specifies a fine of \$2,000.

The total fine being sought is \$6,000.

VI. Hearing, Required Response

You have the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, July 24, 2000 at 9:00 a.m in Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond **no later than June 12**, using the enclosed form as follows:

1. If you plan to attend the hearing, please sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form.
2. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If you wish to discuss the possibility of settling the case, please sign the appearance and

return it to Mr. Ballentine **and** call Mr. Ballentine to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If you wish to have a hearing but are unable to attend as scheduled, you must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If you do not notify Mr. Ballentine in advance and do not attend the hearing, the hearing will be conducted in your absence in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by "a preponderance of the evidence" means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violation(s) and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

The hearing that has been scheduled is a formal hearing. The hearing will be

tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed.

The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced. If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

If you wish to have an informal meeting to discuss the issues, you must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via DES's Web page (www.state.nh.us.des). If you have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

COPY

Rene Pelletier, Manager
Land Resources Management Program

Enclosures: (NHDES Fact sheet #CO-2 1999)

cc: Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings & Rules Attorney
Harry T. Stewart, P.E., Director
Loudon Conservation Commission
Loudon Board of Selectmen
Marjory Swope, NHACC
Jennifer Patterson, DOJ/EPB

*****RETURN THIS PAGE ONLY*****

Appearance

____ I/we will attend the hearing scheduled for **Monday, July 24, 2000 at 9:00 a.m.** in **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, N.H.

Signature Date

NAME: (print or type): _____

Signature Date

NAME: (print or type): _____

WAIVER OF HEARING

____ I/we certify that I/we understand my/our right to a hearing regarding the imposition of the proposed administrative fine and that I/we hereby waive those rights. The fine payment in the amount of \$6,000 paid to "Treasurer, State of New Hampshire" is enclosed*

*If you pay by check, draft, or money order that is returned due to insufficient funds, state law RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.

Signature Date

NAME: (print or type): _____

Signature Date

NAME: (print or type): _____

RETURN THIS PAGE ONLY TO:

James Ballentine, DES Enforcement Paralegal
Department of Environmental Services
6 Hazen Drive
PO Box 95
Concord, NH 03302-0095